

ASSAYING COMMUNITIES: NOTES FROM *THE TEMPEST*

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I. INTRODUCTION

No creative work has a single source, an isolated origin. This truism about humankind is, if anything, even more true of great works of art. From the start of any inquiry into the origins of a famous book or poem or painting, it is appropriate to be humbled by the complexity, indeed the impossibility, of entirely capturing influences, sources, and context.

With this requisite caveat out of the way, however, I have the temerity to want to speak about beginnings. I hope to explore—and I even aspire to do so in an original manner—part of the lasting greatness of William Shakespeare's *The Tempest*. I have thus set myself up to sound like the professor who objects when a colleague says, "There is no such thing as original thought." The professor then angrily asserts, "I said that first."

I recognize that there is additional *chutzpa* in my exploration of *The Tempest*. I never studied the play in school; I certainly have not had the tickets punched that are usually necessary for what passes as scholarly credibility on this particular line. Yet the skeptical utopian in me aspires to speak with some sense despite feeling beyond the fringe

* Professor of Law, Boston University. B.A., M.U.S., J.D., Yale. It is a cliché to express gratitude at the start of an article to a long list of friends, and perhaps to a few influential acquaintances as well. It is less common, but exceptionally pleasant, to have the chance to thank an entire community. This symposium provides such a rare opportunity for two reasons. It marks a delightful homecoming to the academic community in which I began law teaching and to many friends who helped me when I needed it then and who continue to help me now. I continue to need them. It is also a chance to thank the other participants who, individually and collectively, have proved over the years that a group need not be in continuous contact to form vital connections. I am also grateful to participants in faculty symposia in law, interpretation, and American studies at SUNY- Buffalo, the University of Iowa, and Tel Aviv University. In particular, I would like to thank Hugh Macgill and Carol Weisbrod for bringing this symposium together, and for laughs, ideas, and friendship over many years.

in numerous ways. Or, as Prospero says in the Epilogue to *The Tempest*:

Now I want
Spirits to enforce, art to enchant;
And my ending is despair
Unless I be relieved by prayer,
Which pierces so that it assaults
Mercy itself and frees all faults.
As you from crimes would pardoned be,
Let your indulgence set me free (Epilogue 13-20).¹

This, in my view, is brilliant. The passage is much more than a plea for applause at the end of a play. This finale combines optimism with fallibility, realism about limits with a call for a leap of faith. It emphasizes the need to rely on others for the self to flourish. The Epilogue, therefore, encapsulates several crucial paradoxes within what I read as a subversive play about the pitfalls of power and the follies of freedom.

I will start with a selective, slightly annotated review of the characters and plot. Next, I will give a brief account of the 1609 wreck in "the still-vexed Bermoothes" of the Sea Venture, the flagship of a fleet of nine vessels sent to relieve the new colony at Jamestown, Virginia. In particular, I will briefly describe what I have found out so far about an adventurer to the New World aboard that ship, one Stephen Hopkins. I will then try to connect these historical specifics to the mystery of a play that floats beyond time and place.

Shakespeare's mastery of the play's elements successfully upsets our preference for particulars yet somehow powerfully anchors characters and their words in common understandings. This article will try to show how competing notions of community and varieties of servitude blend in a work that will not oblige our propensity for pigeon-holing comedy or tragedy, celebration or jeremiad. In conclusion, I will return to where we began. As John Locke put it a few years after *The Tempest*, "Thus in the beginning, all the World was *America*."²

1. Unless otherwise stated, all citations in the text are to William Shakespeare's *The Tempest* (Riverside ed. 1974), and refer respectively to the act, scene, and line(s) of this work.

2. J. LOCKE, *Second Treatise of Government* § 49, in TWO TREATISES OF GOVERNMENT 319 (P. Laslett ed. 1980)(3d ed. 1698).

II. THE PLOT: THIN DESCRIPTION

The Tempest opens with the dramatic tumult of a tempest at sea. The opening storm scene is a truncated lesson in how we are all in the soup together. There are multiple meanings in the exchanges between the boatswain and the passengers from the courts of Naples and Milan, but there is little subtlety in the boatswain's message to his noble passengers when they try to intermeddle and to pull rank: "What cares these roarers for the name of king?" (I.i.16-17). When Gonzalo, a good-hearted but silly-seeming old councillor, reminds the boatswain of "whom thou hast aboard" (I.i.19), the boatswain's reply is, "None that I more love than myself" (I.i.20).

Thus, when it comes to a crunch in one of the play's few inherently dramatic scenes, we get immediate questioning of authority (I.i.20-27).³ There is disruption of the natural order. Gonzalo is a nattering bother and the ship's master is suddenly absent when he is most needed. Moreover, a pair of nobles, Sebastian, the brother of Alonso, King of Naples, and Antonio, the usurping duke of Milan, respond to the crisis by debating whether to sink with the king or to abandon him. At least Gonzalo argues for doing something, even if it is apparently only assisting the king and prince at prayers, "for our case is as theirs" (I.i.54). Though Gonzalo seems not to perceive that such communal reciprocity should be applied by the nobles to the boatswain and sailors, this first scene indicates that any hope of salvation lies exclusively in the crew's seamanship and surely not in the bluster of their betters.

We will soon return to my view of Gonzalo as a key figure in the play, and to this vital tension between taking care of oneself and identifying "our case" as "theirs." For now, it is worth pondering how this first scene's direct assault on hierarchy might have played on Hallow's Eve, 1611, when *The Tempest* was performed before the always insecure James I and his court.

Most of the play's plot is not portrayed directly, but is instead described in terms of previous action. This history is almost all packed

3. Faced with an officious and meddlesome Gonzalo, the Boatswain directly questions the limits of his authority:

You are a councillor; if you can command these elements to silence, and work the peace of the present, we will not hand a rope more. *Use your authority*. If you cannot, give thanks you have lived so long, and make yourself ready in your cabin for the mischance of the hour, if it so hap.—Cheerly, good hearts!—*Out of our way, I say!* (I.i.20-27) (Emphasis added).

into the next scene. Act I, Scene 2, begins with an empathetic speech by Miranda, who rues her lack of power to intervene to stop the storm or to save those on the ship. Prospero, her father, reassures her that "There's no harm done" (I.ii.13). In fact, extreme paternalist that he is, he tells her, "I have done nothing, but in care of thee" (I.ii.16). Now, at last, he believes it is time to tell his teenage daughter the story of what occurred "in the dark backward and abysm of time" (I.ii.50). He begins by telling her "[thou] art ignorant of what thou art, nought knowing of whence I am" (I.ii.18-19).

Prospero's egocentrism, evident in this statement, continues throughout the play, though it is near its peak here. Not only does Prospero define his daughter, Miranda, entirely in terms of lineage (of "whence I am") (I.ii.18-19), but he takes full credit, in the unexplained absence of Miranda's mother, for single-handedly using his art to create the virtue of Miranda's compassion. Proclaiming himself to be Miranda's "schoolmaster" (I.ii.172) as well as her father, Prospero now tells her what occurred twelve years before. In the good old days, recalled vaguely by Miranda through the haze of early childhood memories, Prospero was "a prince of power" (I.ii.54) in Milan and her mother "a piece of virtue" (I.ii.56). So what happened?

It is a cautionary tale for all, but exceptionally so for the rare sort of person who might actually read this essay. Prospero explains the dangers of too much study, particularly study of "the liberal arts" (I.ii.73). While he studied, Prospero entrusted the government of the dukedom to his brother, Antonio, who "perfected how to grant suits,/ How to deny them, who t'advance, and who/ To trash for over-topping" (I.ii.79-80). With such Machiavellian skills, Antonio was able to hide like ivy and attack Prospero's "princely trunk" (I.ii.86). Antonio could do this because Prospero neglected worldly ends and overprized popular support. Prospero's excessive trust, which he calls a "confidence sans bound" (I.ii.97), gave Antonio his opening to turn Milan over to its enemy, Naples, and to exile Prospero and Miranda.

Prospero draws an analogy to a parent, an analogy which is central to one of the play's basic themes: the complexity and contrariness of nature and nurture, of what is taught and what is inherited, of what is settled by the past and what can be changed. He recalls:

[M]y trust,

Like a good parent, did beget of him

A falsehood in its contrary, as great

As my trust was, which had indeed no limit (I.ii.93-96).

Any parent—and, for that matter, anyone who might ever have been a child—can relate to this portrait of the need for limits. Moreover, Shakespeare tightens the screws on any liberals who might still be out there. Not only does trust have its limits, but Antonio remains unaware that he has gone wrong. Prospero recalls that Antonio,

having into truth, By telling of it, made such a sinner of his
memory To credit his own lie—he did believe He was indeed
the Duke, out o' th' substitution, And executing th' outward
face of royalty With all prerogative (I.ii.100-105).

This directly assaults some of the pretensions of royalty. Moreover, by seemingly undermining loyalty and royalty, this sobering lesson about the need to probe beneath appearances is in tension with the use of the fiction of the divine right of kings “to insure . . . a king who not only could do no wrong but would do no wrong.”⁴

This subversive point is underscored when Miranda elaborates the vexing nature/nurture theme. If her uncle, Antonio, could be so bad, Miranda wonders, what is she to think of her grandmother? She concludes that, “Good wombs have borne bad sons” (I.ii.119). Prospero ignores the devastating point, instead telling Miranda how Antonio and Alonso, fearing public outrage if they had executed their victims outright, put “me and thy crying self” (I.ii.132) aboard an ill-fitted boat several “leagues at sea” (I.ii.145). Somehow, however, “noble Neapolitan Gonzalo” provided food and water and “furnished me/ From mine own library with volumes that/ I prize above my dukedom” (I.ii.166-68). At this point, Prospero still seems wedded to his books and his magic, and quite sure of himself as father, teacher, and ruler. He informs Miranda that she has benefitted from their shared isolation: “[H]ere/ Have I, thy schoolmaster, made thee more profit/ Than other princess' can, that have more time/ For vainer hours, and tutors not so careful” (I.ii.171-74).

Miranda dutifully thanks heaven for that, but wonders why Prospero raised the sea-storm. He answers vaguely that Fortune brought his enemies to the shore of their island home, and tells her not to ask any more questions, but to sleep, for “'tis a good dulness,/ And give it way. I know thou canst not choose” (I.ii.185-6). This clearly frames the questions of what constitutes a good tutor, a good parent, and a good ruler. Throughout the play, the nagging issue constantly recurs of how

4. E. MORGAN, *INVENTING THE PEOPLE* 100 (1988).

much control Prospero actually can exert over the other characters and himself, through his magic or his personality, his nature or his studies. Much of the time his power seems akin to that version of "divinity" which, as Edmund Morgan points out, "when assumed by mortals (or imposed upon them), can prove more constricting than subjection."⁵

In the introduction to Ariel which follows, Prospero betrays little sense of the limitations of his power. Rather, he is terribly possessive of "my Ariel" (I.ii.188). Prospero turns belligerent when Ariel dares remind him that he promised Ariel liberty. He threatens to return Ariel to a tree—this time an oak and not the softer cloven pine from which Prospero rescued the airy spirit—and he insists upon the full measure of two additional days of service which Ariel owes him according to their contract. Ariel has worked wonders in carrying out Prospero's complicated plans for the storm and the safe separation of those on board the ship. When Ariel mentions liberty, however, Prospero excoriates his indentured servant as "my slave" (I.ii.270).

We next meet Caliban. We learn that Prospero is even nastier to this "freckled whelp, hag-born" (I.ii.283), whom Prospero considers a natural slave, "A devil, a born devil, on whose nature/ nurture can never stick" (IV.i.188-89). Prospero originally found his island inhabited only by Caliban and Caliban's mother, Sycorax, who arrived there pregnant and who was abandoned on the island by sailors. We hardly get a sympathetic portrait of this single parent, however, and we learn that Sycorax's commands were too earthy for a delicate spirit such as Ariel, whom she imprisoned in that painful pine.

Now Prospero has taken the island from Caliban, though Caliban first loved Prospero and taught him how to make use of the island's natural abundance. As Caliban picks up this narrative strand, we learn that Prospero initially charmed Caliban and taught him the power of naming. Now, Caliban claims, his only benefit from his knowledge of language is the ability to curse Prospero. Yet Prospero is no slouch at demeaning Caliban, whose service is absolutely necessary, but who is an "Abhorred slave,/ Which any print of goodness wilt not take,/ Being capable of all ill" (I.ii.351-53).⁶

The character of Caliban, his relationship to the other characters, and his special, lyrical command of language have intrigued playgoers,

5. *Id.* at 21.

6. Cf. W. BOOTH, *THE COMPANY WE KEEP* 232 n.5 (1988) ("The word 'character' comes from the Greek word for 'stamp' or 'mark,' but also can be translated as 'ethos.'"). Hence, Prospero's condemnation of Caliban may be a direct comment upon Caliban's flawed character.

readers, and critics for centuries. Indeed, even skimming reactions to Caliban suggests that this character continually serves as a palimpsest for critics. For the first century or so, for example, the dominant critical view was that the beauty of Caliban's speeches in combination with his savage status suggested that he had invented his own language.⁷ Dr. Johnson answered that Caliban's language was nothing more than what a creature like Caliban, in Caliban's situation, realistically would be expected to sound like.⁸ Within the last fifty years, no less distinguished a critic than Mark Van Doren wrote of Caliban as the lowest creature in the natural order, in an analysis that now distressingly seems racist.⁹

Caliban may be a noble savage or a vicious cannibal, a being punished either wrongly or rightly for his attempt to follow his natural sexual urges toward Miranda. When he explores the possibility of rebellion, Caliban is eloquent about the yoke of the tyrant and the attractiveness of freedom; yet Caliban also is immediately servile towards foolish would-be rebels, Trinculo and Stephano, at least so long as Cali-

7. See, e.g., Rowe, *Some Account of the Life &c. of Mr. William Shakespear* 13-14 (1709), in D.N. SMITH, *EIGHTEENTH CENTURY ESSAYS ON SHAKESPEARE* (1963). Wrote Rowe:

[T]hat extravagant Character of *Caliban* is mighty well sustain'd, shews a wonderful Invention in the Author, who could strike out such a particular wild Image, and is, certainly one of the finest and most uncommon Grotesques that was ever seen. The Observation was extremely just. *That Shakespear had not only found out a new Character in his Caliban, but had also devis'd and adapted a new manner of Language for that Character.*

Id.

8. Johnson stated:

Whence these critics derived the notion of a new language appropriated to Caliban, I cannot find: They certainly mistook brutality of sentiment for uncoothness of words. Caliban had learned to speak of Prospero and his daughter, he had no names for the sun and the moon before their arrival, and could not have invented a language of his own without more understanding than Shakespeare has thought it proper to bestow upon him. His diction is indeed somewhat clouded by the gloominess of his temper and the malignity of his purposes; but let any other being entertain the same thoughts, and he will find them easily issue in the same expressions.

S. JOHNSON, *Notes on The Tempest* quoted in G.F. PARKER, *JOHNSON'S SHAKESPEARE* 119 (1989).

9. See M. VAN DOREN, *SHAKESPEARE* 282-83 (1939) (reissued as a Doubleday Anchor Book in 1953); see also D. TRAVERSI, *SHAKESPEARE: THE LAST PHASE* (1954) (views similar to Van Doren's, *infra*, expressed in the year of Brown v. Board of Education). To a lesser extent, this is the view expressed in Kermode, *Foreword to SHAKESPEARE, THE TEMPEST* (F. Kermode ed. 1954). For a stinging critique of the views propounded about Caliban and Prospero by Traversi and, somewhat, Kermode, see Empson, *Hunt the Symbol* (first published in 1964), reprinted in W. EMPSON, *ESSAYS ON SHAKESPEARE* 238-43 (D. Pirie ed. 1968) (accusing Traversi of "expressing . . . the pure milk of master-race doctrine . . . with the usual glum sanctimoniousness" and finding "something very shambling and sub-human about the whole [Moral Criticism] movement.") *Id.* at 239.

ban can consider any object of his worship "valiant" (I.iii.47). The play's final scene is fraught with interpretive possibilities. Prospero here refers to Caliban as "this demi-devil/ (For he's a bastard one)" (V.i.272-73). To the masters of Stephano and Trinculo, Prospero says, "two of these fellows you/ Must know and own," and he adds, "this thing of darkness I/ Acknowledge mine" (V.i.274-76). To claim control is to acknowledge responsibility. On several levels, the character of Prospero suggests that to possess another is also to be possessed, to have control is also to surrender some freedom.

The play's entire denouement actually reveals how extensively the romantic, comedic ending leaves matters unresolved. Is Prospero merely reclaiming ownership of a slave cursed at birth with immutable traits or has Prospero learned empathy in the course of the play? Will he be a better Duke when he returns to rule Milan—though "Every third thought shall be my grave" (V.i.312)—despite, or because of, his choice to renounce his powerful magic? Will Caliban have his island back, and be less of what he himself describes as a "thrice-double ass" (V.i.296), after the final applause?

This is not the place to pursue, and certainly not to answer, these questions. We will never resolve them, of course, which helps explain why *The Tempest* lasts. Much of its greatness lies in its open-ended complexity, in the multitude of challenges in its moral equipoise. But as forgetful Prospero might say, now, let us return to the plot.

Ferdinand, the son of Alonso, King of Naples, is the next character introduced. First Ariel sings a sardonic song about Ferdinand's father:

Full fadom five thy father lies Of his bones are coral made:
Those are pearls that were his eyes: Nothing of him that doth
fade, But doth suffer a sea-change Into something rich and
strange. Sea nymphs hourly ring his knell:

Burthen. Ding-dong.

Hark now I hear them—ding-dong bell (I.ii.397-405).

But Ferdinand quickly becomes oblivious to his father's presumed fate as he and Miranda find love at first sight. Indeed, reassured that Miranda is a virgin, Ferdinand willingly undergoes imprisonment, torture, and even the meaningless drudgery of slavery imposed by Prospero. Ferdinand now cares for nothing but Miranda. Unlike Caliban, who rails and raves against his loss of freedom, Ferdinand is charmed into becoming an enthusiastic, voluntary slave for virtuous love.

When Miranda dares to intervene to stop Prospero's punishment

of Ferdinand, Prospero turns on her and says, "What, I say,/ My foot my tutor?" (I.ii.469-70). He commands her to silence and suggests that he may well hate Miranda if she utters another word. Prospero, as teacher, father, and self-proclaimed artistic creator of Miranda's virtue of empathy, remains the embodiment of command and control.¹⁰ A Freudian might speculate that Miranda's statement that Ferdinand "Is the third man that e'er I saw; the first/ That e'er I sigh'd for" (I.ii.446-47) excludes Prospero and thus enrages him. This hardly excuses Prospero's lack of self-control.

Through Prospero's insistent manipulation, Ferdinand and Miranda remain a content, albeit treacly, pair. Under Prospero's voyeuristic gaze, Ferdinand is soon proclaiming that the ends obviously justify the means, that "some kinds of baseness/ Are nobly undergone; and most poor matters/ Point to rich ends" (I.i.2-4). When Miranda proposes marriage to this smitten optimist, Ferdinand ecstatically agrees. In a kind of homage to delayed gratification and the Protestant ethic, the pair go about their assigned tasks, happily awaiting the formalization of their vows, with Ferdinand proclaiming his wish to live forever where "So rare a wond'ered father and a wise/ Makes this place Paradise" (IV.i.123-24).

With but a few exceptions, the rest of the play is quite schematic and hardly dramatic. Sebastian and Antonio plot more evil. Antonio, drawing on his own evil experience, instructs that "what's past is prologue, what to come/ In yours and my discharge" (I.i.253-54). Antonio may have precedent on his side but this time Prospero's magic clearly takes precedence and foils both the bloody usurpation plotted by Antonio and Sebastian and the clumsy uprising discussed by Stephano, Trinculo, and Caliban. An elaborate wedding masque highlights the possibilities of "foison plenty" (IV.i.110) from nature under cultivation—an image apparently already dear to English hearts—but it ends abruptly when the absent-minded Prospero recalls that he ought to in-

10. For more upbeat views of Prospero, see, e.g., Denvir, *William Shakespeare and the Jurisprudence of Comedy*, 39 *STAN. L. REV.* 825, 835-37 (1987) (viewing Prospero as a fair, even benevolent, judge); Schleiner, *Prospero as a Renaissance Therapist*, 6 *LIT. & MED.* 54 (1987) (arguing that Prospero may be seen as a crafty therapist with a moral and curative large design); but see Kott, *Prospero's Staff*, in D.J. PALMER, *SHAKESPEARE The Tempest: A CASEBOOK* 244 (Prospero darkly portrayed as orchestrating a violent morality play); cf. W.H. AUDEN, *Prospero in The Sea and the Mirror* in *COLLECTED LONGER POEMS* 204 (1965) ("When I woke into my life, a sobbing dwarf/ Whom giants served only as they pleased, I was not what I seemed . . . Now, Ariel, I am that I am, your late and lonely master,/ Who knows now what magic is—the power to enchant/ That comes from disillusion.")

tervene against the scheme by Caliban and his new-found masters to steal Prospero's books and thereby overthrow his rule.

Once reminded by Ariel of the forgiveness Ariel would practice "were I human," (V.i.20) Prospero decides that "The rarer action is/ In virtue than in vengeance" (V.i.27-28). This scene figures prominently in interpretations of Prospero as a direct surrogate for Shakespeare in his later years, particularly when Prospero decides to break his staff and drown his book "deeper than did ever plummet sound" (V.i.56). He forgives everyone under his power on the island, even his brother Antonio, "Unnatural though thou art" (V.i.79), though Antonio may not accept the gesture. In the play's final reconciliation scene, Prospero turns first to Gonzalo, to embrace one "whose honor cannot/ Be measured or confined" (V.i.121-22).

Throughout the play, Gonzalo seems foolishly optimistic as well as committed to doing good. He is aptly described as "this lord of weak remembrance" (I.i.232). In fact, although D.J. Palmer noted that Caliban "might be claimed as the only American in Shakespeare,"¹¹ Gonzalo actually may be more of an American archetype, albeit a paradoxical one. Of course, Gonzalo represents the Neapolitan court life, a community which symbolized decadence and evil machinations. Nevertheless, Gonzalo repeatedly emphasizes two themes. First, he prattles endlessly in the belief that even a bad situation will somehow improve if people only believe it will. Second, Gonzalo continuously reiterates, in effect, that "we are all in this mess together," and therefore must and might help one another. By paying attention to the character of Gonzalo, and to the way his ahistorical optimism is both celebrated and undercut throughout the play, we begin to grasp *The Tempest's* brilliant undermining of accepted notions of human nature and the sources of varied ideas of community.

In the play's opening scene, it is Gonzalo who provokes the boatswain but who also recognizes that "our case is as theirs" (I.i.54), while all about him are losing their heads in their individualistic ways. Gonzalo begins Act II by urging his fellow shipwrecked passengers to be merry, reminding them that they are luckier than most people and instructing them that "Our hint of woe/ is common" (I.i.32-4). As was characteristic in initial reports describing the New World to English readers,¹² Gonzalo notes, "Here is everything advantageous to

11. D.J. PALMER, *supra* note 10, at 16.

12. L. MARX, *THE MACHINE IN THE GARDEN: TECHNOLOGY AND THE PASTORAL IDEAL IN AMERICA* 34-72 (1964). In particular, Shakespeare pretty clearly read and was influenced by Wil-

life" (I.i.50). Though the others mock him, Gonzalo sees the grass as "lush and lusty" (I.i.54) and remarkably green. His fellows may rue their trip and mutually recriminate, but Gonzalo begins to describe his utopian scheme "Had I plantation of this isle . . . And were the king on't" (II.i.144-46).

What follows is a wonderful summarizing, yet undercutting, of utopianism generally and of the optimism and celebration of what is "natural" in particular, inspired by Montaigne's essay, "On Cannibals."¹³ Gonzalo describes a commonwealth in which "I would, by contraries,/ Execute all things" (II.i.148-49). There would be no law. He envisions a world without magistrates, contract, succession, feudalism, or private property. All men would be idle, all women idle but also innocent and pure. In sum, Gonzalo says, there would be "[n]o sovereignty" (II.i.157).

Sebastian immediately punctures the dream: "Yet he would be king on't" (II.i.157). Then Antonio adds a classic criticism of reformers and dreamers: "The latter end of his commonwealth forgets the beginning" (II.i.158-59). Shakespeare thereby captures, and pulverizes, a familiar strain of "After the Revolution" rhetoric, as well as the psychology of some of the proponents of such fantasies. Yet, while it is foolish for Gonzalo to believe in a world without sovereignty, in which nature surely will provide "all foison, all abundance,/ To feed my innocent people" (II.i.164-65), it may be still more foolish (and significantly more blameworthy) to ridicule this old man who still manages to be visionary. Not only do Sebastian and Antonio mock Gonzalo's scheme for a commonwealth without sovereignty, but they immediately begin a direct assault against sovereignty by plotting to kill the king.

In several direct ways, then, Shakespeare seems to question authority quite effectively. To be sure, he does so subtly and cautiously, but his veiled social criticism is a crucial element of the play. In neither the tempest scene nor the byplay about Gonzalo's commonwealth is the

liam Strachey's 1609 report about the wreck of the *Sea Venture*, *A TRUE REPORTRY OF THE WRACKE AND REDEMPTION OF SIR THOMAS GATES, KNIGHT*, though the report was not published until 1625. See *infra* notes 22-36 and accompanying text. For a survey of the scholarly debate on the relevant narratives, and the view that "nobody who impartially surveys the evidence . . . will deny that Shakespeare was interested in the Gates expedition, and in the New World generally," see Kermode, *Foreword to SHAKESPEARE, THE TEMPEST* xvi-xvii (F. Kermode ed. 1954, 1985 printing). Yet, despite its reference to the "still-vex'd Bermoothes," if the play was set anywhere on earth, it seems set primarily in the Mediterranean, somewhere off the coast of Africa. See, e.g., L. MARX, *supra* at 41.

13. M. MONTAIGNE, *On Cannibals* in *ESSAYS* 105 (J.M. Cohen trans. 1958).

paradox of how to rule with justice resolved, nor does Shakespeare offer much instruction about how we are to wrestle with this issue. It is illuminating, however, to compare Prospero's manipulative use of power, coupled with his keen sense of the hold of the dark past, with Gonzalo's utopianism. What emerges, in my view, is subtle, subversive commentary underscoring "the paradoxical practices of an authority deeply complicit in undermining its own legitimacy."¹⁴

That James I had *The Tempest* performed a second time in 1613, to celebrate the marriage of his daughter, Elizabeth, seems to suggest that I overstate the play's subversive qualities. But if anyone were capable of missing effective but subtle critical commentary in England during the reign of James I, it was the "most educated fool in the world,"¹⁵ i.e., James I.

Moreover, when we follow the character of Gonzalo further, we learn more about "the half-hidden cultural transactions through which great works of art are empowered."¹⁶ We may find instruction here concerning the conundrum of "How to live at all in a groundless world,"¹⁷ made particularly vivid by the play's lack of grounding in either time or space.

Gonzalo is the play's only character who betrays any awareness of the wonder of the New World and its magic, with the possible exception of Miranda, whose "O brave New World" naivete is attributable almost exclusively to her innocence. Moreover, Gonzalo expresses his awareness of radically changed perceptions within his own long lifetime; he even seems aware of the illumination that travellers' tales may provide in terms of what otherwise is assumed to be unchangeable (I.iii.28-49).¹⁸ Finally, it is left to Gonzalo to summarize the play's ap-

14. S. GREENBLATT, *SHAKESPEAREAN NEGOTIATIONS* 40 (1988).

15. A phrase commonly used to describe the character of James I.

16. S. GREENBLATT, *supra* note 14, at 4.

17. S. CAVELL, *DISCOVERING KNOWLEDGE IN SIX PLAYS OF SHAKESPEARE* 3 (1987). Cavell argues that skepticism, which he describes as "privatization of the world, repudiation of assured significance, repudiation of capacity to improvise common significance," is central to Shakespearean tragedy. *Id.* at 19. But Cavell suggests that the second half of *The Winter's Tale*, for example, shows that such profound skepticism is "inherently unstable." *Id.* at 198. Moreover, such deep skepticism seeks recovery through reconceiving—" . . . in finding skepticism's source (its origin, say, if you can say it without supposing its origin in the past)." *Id.* While my reading of *The Tempest* is similarly concerned with skepticism and with questions of "participation and parturition," *id.* at 200, my sense of the burden of history, both intergenerational and "public," may be even darker than is Cavell's. We obviously share an interest (perhaps grasping for hope would be a more apt description) in reading Shakespeare to suggest a quest to transcend skepticism.

18. Cf. M. GLENDON, *ABORTION AND DIVORCE IN WESTERN LAW* 5-7 (1987) (a fine brief description of this phenomenon in Plato).

parent happy resolution. Significantly, he does so by way of contrasts:

Was Milan thrust from Milan that his issue
Should become kings of Naples? . . .
And Ferdinand . . . found a wife
Where he himself was lost; Prospero, his dukedom
In a poor isle; and *all of us, ourselves,*
When no man was his own (V.i.205-13)(emphasis added).

At the very least, this notion of self-discovery while one is lost resonates with the suspension of disbelief during a successful theatrical production. It also evokes the commonplace sense of being lost, then found, in religious experience. But to encounter a time "when no man was his own" may have broader implications, even recognizing that "We are such stuff/ As dreams are made on" (IV.i.156-57). First, Gonzalo's point might encapsulate the essence of the current vogue for defining individuals in terms of our own social constructions of reality.¹⁹ It also seems to encompass an affirmative conception of communitarianism, utopian or otherwise. Finally, it may relate to the theme of servitude I discussed, suggesting that there is no such thing as individual freedom, but rather that we all experience various gradations of encumberment on our liberty.

Of course, we must not get carried away toward assuming that Gonzalo has somehow cut through the play's many quandaries. For example, only a few lines after Gonzalo's speech, Caliban, Stephano, and Trinculo enter the final scene and announce a strikingly similar benchmark for the drunken, absurd new world they seek to create out of the "[m]isery" that "acquaints a man with strange bedfellows" (I.ii.39-4). Stephano proclaims, "Every man shift for all the rest, and let no man take care for himself; for all is but fortune" (V.i.256-57).

And yet, if you were to agree with me to celebrate Shakespeare as a master of paradox and a magician of challenging equipoise, this comic mirroring by the clownish trio might underscore Gonzalo's point.

19. This theme cuts across many academic fields. Consider, for example, the work of Rorty and Sandel in philosophy and political theory; Wayne Booth among many others in literary criticism; David Hall and Bruce Mann among historians of colonial New England; and Milner Ball, Martha Minow, and Carol Weisbrod among law professors at this symposium. This phenomenon also helps to explain the renewed interest in Charles Peirce and his claim that even science depended upon membership in an infinite "community of inquiry." *Quoted in R. JACKSON WILSON, IN QUEST OF COMMUNITY: SOCIAL PHILOSOPHY IN THE UNITED STATES, 1860-1920*, at 41 (1968) (containing an excellent general discussion of an earlier search for community among academics and intellectuals in the United States).

Gonzalo himself is clearly both a silly, cockeyed optimist and an honorable and perceptive observer. He and these would-be rebels offer a prescription for what to do when sovereignty is undone.

III. "FREED FROM THE GOVERNMENT OF ANY MAN"²⁰

Much of the early history of English settlement in North America involves direct concern over sovereignty, a concept very much up for grabs in the early 1600s both in the new colonies and in England. Pervasive uncertainty about sovereignty explains a great deal about the troubled reign of James I and, more particularly, much about Lord Coke's famous attempt to thread several needles in *Calvin's Case*.²¹ In this section, I suggest that *The Tempest's* examination of difficulties over sovereignty, and the problematic nature of authority alleged to derive from time immemorial in the sense of "traceable to no original act of foundation,"²² relates directly to the story of the 1609 wreck of the Sea Venture. These difficulties also echo in the New World practice of committing basic matters to Compacts and Fundamental Orders. Finally, I will argue that a compelling feature of life among the first colonists in Virginia and New England was intrigue and pervasive dispute about what gave anyone authority to claim to be in charge.

20. Kolb, *The Tempest*, 34 AM. HERIT. 26, 31 (April/May 1983) (quoting 19 HAKLUYTUS POSTHUMUS OR PURCHASE HIS PILGRIMES, CONTAYNING A HISTORY OF THE WORLD IN SEA VOYAGES AND LANDE TRAVELLS BY ENGLISHMEN AND OTHERS 1 *passim* [hereinafter HAKLUYTUS]).

21. 77 Eng. Rep. 377 (K.B. 1608). As Joseph Henry Smith put it, "The report of *Calvin's Case* remained for many a day the point of departure of subsequent judicial discourse respecting dominions not parcel of the realm." J.H. SMITH, APPEALS TO THE PRIVY COUNCIL FROM THE AMERICAN PLANTATIONS 469 (1950). The case itself was a fabricated inquiry about whether Calvin, who was born in Scotland before James I ascended the throne, was an alien, thereby not able to bring either real or personal legal actions for lands he claimed in England. 77 Eng. Rep. at 379. Lord Coke's report had numerous important implications for the subsequent law of the English colonies. The most significant was Coke's distinction between territory that England acquired by conquest from a Christian king and territory acquired from infidels, who were presumed to be perpetual enemies. *Id.* at 397-99. In the case of infidels, all laws were abrogated and the Crown governed under principles of natural equity until the laws of England were specifically introduced. *Id.* at 398. Thus, in North America, it was thought to be necessary to have specific charters as the foundations for sovereignty and law. I owe thanks to Fred Konefsky for pointing out the particular resonance of *Calvin's Case* for this paper.

22. J.G.A. POCOCK, *The Common-law Mind: Custom and the Immemorial* in J.G.A. POCOCK, THE ANCIENT CONSTITUTION AND THE FEUDAL LAW 37 (2d ed.1987); see also Cramton, *Demystifying Legal Scholarship*, 75 GEO. L.J. 1, 2 (1986) (for the famous story "I'm sorry . . . it's turtles all the way down," somewhat misattributed to William James's description of the conflict between science and faith).

A. *The Adventures of the Sea Venture*

In June, 1609, perhaps the largest flotilla yet assembled for colonizing purposes sailed from Plymouth to relieve the struggling Virginia Company colony at Jamestown. In part to avoid disputes about authority, Sir Thomas Gates²³ and Sir George Somers²⁴ sailed together aboard the *Sea Venture*, the huge flagship of the nine-vessel fleet. There are two eyewitness accounts of the terrible storm during which the *Sea Venture* lost contact with the other ships and eventually came to rest on a coral reef just off one of the dreaded "Devils' Isles," otherwise known as the Bermudas.²⁵

After struggling ashore, the castaways found wild hogs and other evidence of earlier shipwrecks. They also found an island blessed with remarkable abundance, with sea birds that could be caught by hand, plentiful fish, tortoises, crabs, and oysters, and even adequate fresh water. Moreover, they were able to salvage supplies from the wreck and to make shelters from the cedar and palm trees they found on the island.

Lieutenant Governor Gates insisted, however, that they resume their mission to Virginia. In time, his efforts to keep the men at work rebuilding a ship capable of taking the party to Virginia produced murmurs and worse. Gates would not leave the work to the skilled craftsmen—he imposed himself into "every meane labour"²⁶—yet Gates could not get the men to work as hard as he thought they should. The slackers, in fact, were not limited to the lower sorts, and some of the better sorts displayed "affections and passions," and even possible "dangerous and secret discontents."²⁷

When the men working on the pinnace sought to convince others

23. Sir Thomas Gates was the newly appointed lieutenant governor of Virginia. See 19 HAKLUYTUS, *supra* note 20, at 4.

24. Sir George Somers was admiral of the fleet. See *id.* at 1.

25. There is considerable internal evidence that Shakespeare used specific details ranging from a description of St. Elmo's Fire in the rigging to the varied reactions of men of all ranks facing imminent death contained in William Strachey's report of the wreck of the *Sea Venture* as a source for *The Tempest*. Kolb, *supra* note 20, at 26. See generally 19 HAKLUYTUS, which reprints William Strachey's TRUE REPORT OF THE WRACK (dated July 15, 1610, but first published in 1625), and Sylvester Jourdain's DISCOVERY OF THE BERMUDAS (1610) (fascimile ed. 1940). The Virginia Company also published an apologetic version in 1610, entitled TRUE DECLARATION OF THE STATE OF THE COLONIE IN VIRGINIA, WITH A CONFUTATION OF SUCH SCANDALOUS REPORTS AS HAVE TENDED TO THE DISGRACE OF SO WORTHY AN ENTERPRISE, which is available in P. FORCE, 3 TRACTS AND OTHER PAPERS (1844).

26. 19 HAKLUYTUS, *supra* note 20, at 28.

27. *Id.*

to stop work and go off to a nearby island until they were provided with better allowances, they were accused of a criminal conspiracy and banished. Next, Stephen Hopkins, who knew and could reason well about the scriptures, got into a dispute and was accused of irreligious and seditious views that might "shake the foundation"²⁸ of the island community. "[I]t was no breach of honesty, conscience, nor Religion," Hopkins asserted, "to decline from the obedience of the Governour, or refuse to goe any further, led by his authority (except it so pleased themselves)."²⁹ Gates might have authority in Virginia, but not in the Bermudas. Now the castaway community was "freed from the government of any man."³⁰ The duty of each was only to his own conscience and "to provide for himselfe, and his owne family."³¹

Hopkins was charged before the entire congregation for these ideas, and Gates condemned him to death for being "the Captaine, and the follower" of his own mutinous scheme.³² Somehow, through plaintive moans and supplications, Hopkins managed to save his skin.

When a gentleman named Henry Paine was spotted stealing weapons rather than serving his watch, Paine allegedly responded that the governor had no authority "and therefore let the Governour (said hee) kisse, etc."³³ Paine was more principled and less lucky than Hopkins. Paine's plea to be spared from hanging, as a gentleman, was granted; instead he faced a firing squad and "towards the evening he had his desire, the Sunne and his life setting together."³⁴ When Sir George Somers and his men heard of the execution, they absconded to the woods and sought to remain there, free from Gates's rule. Eventually, with Somers acting as intermediary, a compromise was worked out and most of the Somers crew returned with amnesty and the option of returning to Bermuda with Somers after reaching Virginia.

Eventually, aboard new ships they respectively christened Deliverance and Patience, Gates and Somers succeeded in clearing the coral reefs, and they and most of their passengers reached Virginia. There, they found a colony so near extinction as to leave no choice but abandonment. As the Sea Venturers and the few surviving Jamestown settlers made their way downriver from Jamestown, they encountered

28. *Id.* at 30.

29. *Id.* at 30-31.

30. *Id.* at 31.

31. *Id.*

32. *Id.*

33. *Id.* at 34.

34. *Id.*

Lord De La Warr and a relief fleet from England. By this stroke of exquisite timing, the colony survived. Somers returned to Bermuda aboard his *Patience* to fetch additional relief supplies, but died there after a farewell feast; his sailors forced their ship to return to England, not to Virginia as Somers had planned. When word of the fate of the *Sea Venture* reached England, the Virginia Company saw fit to publish *A True Declaration of Virginia* for what we might term "spin control," to put the best face on the "tempest of dissension" through which every man sought to "be his own commander."³⁵ Gates ruled Virginia under martial law "of most dispatch and terror" that granted the governor "full and absolute power" to govern and rule all subjects.³⁶ Yet even then, facing starvation, the colonists could not be made to work by the harsh punishments threatened and imposed under Gates's laws.

In fact, the conduct of the settlers at Jamestown during the first decade was startlingly counterproductive. As Edmund Morgan put it: "[T]hey seem to have made nearly every possible mistake and some that seem almost impossible."³⁷ For example, "the English, unable or unwilling to feed themselves, continually demanding corn from the Indians, take pains to destroy both the Indians and their corn."³⁸ Their extremely self-destructive conduct, "their conditioned laziness . . . and disastrous alienation of the Indians," is explainable in part by a glaring lack of leadership. Problems about legitimate authority began with the initial decision by the Virginia Company to keep secret (even from the councilors themselves) the names of the councilors appointed by the King until the settlers arrived in Virginia and opened a locked box that contained the names of the leaders. To say the least, this process fell short of building consensus.

Yet matters grew worse after 1609, when the company obtained a new charter granting it full control and appointed a governor with absolute power. Thereafter, the governors were "ruthless" and conduct toward the Indians grew "increasingly hideous."³⁹ Still the settlers, many of them gentlemen, would not work even when starvation was the unavoidable consequence of their idleness. Neither the initial communal production of food nor the later assignment of private gardens succeeded. It was only after Rolfe's experiment with tobacco and the in-

35. Kolb, *supra* note 20, at 35.

36. *Id.* at 30.

37. E. MORGAN, *AMERICAN SLAVERY - AMERICAN FREEDOM* 72 (1975).

38. *Id.* at 74.

39. *Id.* at 81.

troductio[n] of slavery that Virginia began to seem a viable enterprise.⁴⁰

B. *The Mayflower Compact and the Strange Career of Stephen Hopkins: "For None Had Power to Command Them"*⁴¹

The historical tale of the settlement and its suffering in early Virginia is fascinating in itself, and it surely deepens and darkens our understanding of *The Tempest* and the contested social negotiations the play suggests.

Delightfully, for our purposes, however, Stephen Hopkins pops up again a few years later. This time his story is intertwined with new-fangled notions of constraining secular authority by enumerating limitations on, and purposes of, governance. In this section, I argue that Hopkins's subsequent career illuminates important contradictory impulses captured within *The Tempest*.

As William Bradford tells the tale, when the Mayflower reached Cape Cod in November, 1620, some aboard murmured and proclaimed that "when they came ashore, they would use their own liberty, for none had power to command them."⁴² Unfortunately, Bradford does not name names. But, in one of those ironies that makes history so entertaining, our old mutinous friend Stephen Hopkins was aboard the Mayflower. He was now a gentleman. Hopkins joined the Pilgrims at London along with his pregnant second wife, three children, and several servants. Indeed, the famous baby born aboard the Mayflower was Hopkins's second son, Oceanus.

We probably will never know whether Hopkins had anything to do with the murmurs that helped to induce *The Mayflower Compact*. Yet it is worthwhile for our purposes to follow Hopkins's career a little further. Once safely on dry land at Plymouth, Hopkins quickly assumed a role as a leading figure in the tiny community. When Samoset first

40. *Id.* at 71-105. Morgan succinctly and powerfully makes the case that the English actions suggest a bizarre "suicidal impulse." *Id.* at 75. The English settlers were starving and engaged in cannibalism, and they committed numerous appalling atrocities against the Indians upon whom they depended. Still, they remained unwilling to sow their own crops or even hunt or fish. Instead, they reserved their energy for bowling in the streets. It is astonishing to reflect that we know these things largely from the written record kept by the settlers; the unwritten reality may have been even more brutal.

41. W. BRADFORD, OF PLYMOUTH PLANTATION 75 (S. Morison ed. 1959).

42. *Id.* On the occasion of the return of the original Bradford manuscript from England to Massachusetts, Senator Hoar proclaimed the manuscript to be nothing less than "the only authentic history of what we have a right to consider the most important political transaction that has ever taken place on the face of the earth." Address by Senator Hoar of Massachusetts (May 26, 1897), reprinted in BRADFORD'S HISTORY 'OF PLIMOTH PLANTATION' xxxix (1901).

appeared, for example, and amazed his hosts with his knowledge of English and English ways,⁴³ he was lodged at Hopkins's house. Governor Bradford also chose Hopkins to travel with Edward Winslow and Squanto on a sensitive mission to spy upon and treat with Massasoit, the greatest Indian chieftain. The account of that trip can be read as a fine introduction to the still-fashionable motif of the ugly American tourist. When Massasoit and his wife shared their bed with the travelers, for example, Hopkins and Winslow complained that it was crowded "so that we were worse weary of our lodging, than of our journey."⁴⁴ Although Massasoit fed them exceptionally fine fish, shot with a bow and arrow, and importuned them to stay, the Pilgrims begged off, claiming that they wished to keep the Sabbath at home. The next sentence of their account reveals, however, that they had additional reasons: "For what with bad lodging; the savages' barbarous singing, for they use to sing themselves asleep; lice and fleas within doors; and muskeetoos without: we could hardly sleep all the time of our being there."⁴⁵ In fact, on their journey home, Hopkins and his mates even managed to get into a dispute over tipping. One Indian, they report, "marvelled we gave him nothing; and told us, what he had done for us. We also told him of some discourtesies he offered us, whereby he deserved nothing."⁴⁶ And so the story ends: "Yet we gave him a small trifle. Whereupon he offered us tobacco."⁴⁷

Stephen Hopkins was not always so easygoing. He became the leading tavern-keeper in town and also served four terms on the Governor's Council. But he was not immune from scrapes with the law. Hopkins was fined for serving drinks after hours to servants, for charging more than the fixed price, and even for assaulting John Tisdale while Hopkins was still a magistrate. He also engaged in occasional contract disputes. But the case that most directly echoes the themes I have tried to coax from *The Tempest* involved Hopkins's remarkable obstinacy concerning the plight of one of his maidservants.

This story begins with a n'er-do-well named Arthur Peach, who

43. I am not so enamored of drawing connections between Shakespeare and the New World to claim that he had this specific incident in mind—a decade before it happened—when, upon meeting Caliban, Stephano says, "Where the devil should he learn our language?" (I.ii.66-67). This passage is more suggestive than it first seems, however, because we know that Caliban learned his language from Prospero.

44. E. ARBER, *THE STORY OF THE PILGRIM FATHERS* 470 (1897).

45. *Id.* at 471.

46. *Id.* at 472.

47. *Id.*

arrived in Virginia in 1635. He travelled north and allegedly fought bravely in the genocidal Pequot War of 1637, but soon thereafter he was "out of means and loth to work."⁴⁸ Peach sought to evade his creditors by fleeing Plymouth to Manhattan. He enticed three servants and apprentices to accompany him. Near the present site of Pawtucket, however, Peach and his fellows persuaded a lone Indian they met on the path to smoke a pipe with them, only to rob and stab the Indian. Roger Williams aided the men, taking them to be destitute, but in the meantime the wounded Indian crawled back to the path and was brought to Providence. Although (or perhaps because) two surgeons tried to save him, the Indian died after telling his story. Williams had the culprits intercepted and, except for one who escaped, they were turned over to John Winthrop with the statement that every "son of Adam is his brother's keeper or avenger."⁴⁹ After a bit of jurisdictional quibbling, the three were quickly found guilty and executed, although they confessed and professed great penitence.⁵⁰

The impact of Peach's grievously impeachable character continued, however, and soon produced what one commentator called "virtuous barbarity."⁵¹ Dorothy Temple, maidservant to Hopkins's family, apparently had fallen victim to the wiles of Peach and became pregnant. But Hopkins, however, refused to shelter or provide for her and the son she bore. The Plymouth magistrates determined that her indentures had two more years to run; they decided, therefore, "that, as Hopkins was entitled to her service for that time, he must also clothe and board her in his family or elsewhere."⁵² When Hopkins refused to have anything to do with his maidservant, he was held in contempt and actually served four days in confinement before he agreed to pay for the upkeep of the mother and child for two years. In a separate action, Dorothy Temple was sentenced to be whipped twice publicly; the rest of her penalty was remitted after she fainted during the first whipping.⁵³

Hopkins died a wealthy man in 1644. Although apparently a much-respected citizen, he also was considered unusually "stubborn"⁵⁴

48. J. GOODWIN, *THE PILGRIM REPUBLIC: AN HISTORICAL REVIEW OF THE COLONY OF NEW PLYMOUTH* 406 (1920).

49. *Id.* at 407.

50. *Id.*

51. *Id.*

52. *Id.* at 408.

53. *Id.*

54. *Id.*

and argumentative. He was often in trouble with the authorities, although he himself was one of them. He was a bit of a Prospero, perhaps, in his stubbornness in the case of Dorothy Temple; he also might be likened to the sailors who abandoned Sycorax, pregnant with Caliban, on the island over which Prospero reigned. Most of all, however, Stephen Hopkins's career demonstrates the malleability of the categories of authority when unsettled English ways confronted an even more unsettling New World.⁵⁵ Hopkins's life suggests the strange amalgam of limits and opportunities where, because of idealism and harsh reality, "no man was his own."

IV. THE DARK BACKWARD AND ABYSM OF TIME⁵⁶

A. *Time, Sovereignty, and the Law*

Perhaps the most striking aspect of the intriguing tale of Peach, Dorothy Temple, and Stephen Hopkins is the extent to which, in the early days of New England, the law apparently was applied by those in power even against other men in power. It is hardly surprising to find out that the authorities whipped an unmarried servant girl who bore a child. Even the outpouring of revisionist history that portrays Puritan life and law as relatively tolerant concedes a strong moralistic strain enforced by law. It is more surprising to learn that Peach and two other white men were executed for the murder of a single Indian — we know, in fact, that some of the settlers objected, arguing that it was inequitable that all three should die. But if this is an anomaly, it can be explained in terms of the heinous nature of the crime, Peach's "bad apple" qualities, and the sensitivity of white-Indian relationships in the years immediately after the Pequot War.

These two legal episodes, nevertheless, suggest limits to *The Tempest's* concluding theme of the possibility of actually finding "[m]ercy itself [that] . . . frees all faults" (Epilogue 18), at least in the time of struggle in the first years of the New World colonies. They also underscore the symbolic and real violence within use of the law. Legal events

55. D.O.S. LOWELL, A MUNSEY - HOPKINS GENEALOGY 28 (1920). D.O.S. Lowell, A.M., M.D., Litt.D., the Head Master of the Roxbury Latin School, notes that Stephen Hopkins was "a man of more than ordinary force and character" who "bulked large in the early life of the Plymouth colony." *Id.* at 28-29. It is left to another, however, to claim that Stephen Hopkins was the great-grandfather of the Stephen Hopkins who signed the Declaration of Independence "with a weak hand but a stout heart," and of Ezekiel Hopkins, "the first admiral of our national navy, the co-equal with Washington himself." J. GOODWIN, *supra* note 48, at 435 n.2.

56. W. SHAKESPEARE, *THE TEMPEST* (l.ii.50).

helped to define communal norms in the first decades of the New England settlements. This was particularly important because, as David Hall demonstrates, "fluidity of power" characterized the cultural politics of seventeenth-century New England.⁵⁷

It is the punishment of Hopkins I find most interesting. For one thing, his confinement did not occur in a case situated at the well-traveled junction of Puritan criminal law and morality, a juncture relatively well traveled by scholars. Rather, as Bruce Mann put it in the introduction to his fine study of colonial Connecticut, such cases illuminate how "people defined and attempted to assure what they valued as a society—what behavior was permissible, how people should act toward one another, how people could resolve their differences without resort to violence, and . . . what property was and what rights attached to it."⁵⁸

In Plymouth, apparently, when Hopkins tried to treat Dorothy Temple as Abraham had treated Hagar, such behavior was unacceptable. Two wrongs would not make a right. The episode surely suggests the need to know additional details. Even in stark outline, however, it suggests belief in a type of foundational morality that could prevail over the clout Hopkins clearly enjoyed in Plymouth's little commonwealth. Law, along with politics and religion, is the usual leading suspect for discerning the foundation and scaffolding for such faith. If we now return to *The Tempest*, we may better perceive the play's significant subversive implications about community, law, sovereignty, and freedom.

B. *Communities and The Tempest: What Is Natural?*⁵⁹

Ralph Waldo Emerson, in so many ways a quintessential American, once remarked that our views of nature "determine all . . . [our] institutions."⁶⁰ While tension between art and nature, or a new synthe-

57. D. HALL, *WORLD OF WONDER, DAYS OF JUDGMENT* 19 (1989). Hall's account focuses generally on conflict within the many belief systems of seventeenth-century New Englanders; he cogently probes how these settlers chose and mediated among meanings and how ambivalent they were in doing so.

58. B. MANN, *NEIGHBORS & STRANGERS: LAW AND COMMUNITY IN EARLY CONNECTICUT* 5-6 (1987).

59. *The Tempest* is hardly unique in Shakespeare's attention to this issue, of course. In another of his plays, one character's famous paradox asks, "This is an art/ Which does mend Nature—change it rather; but/ The art itself is Nature." SHAKESPEARE, *The Winter's Tale*, IV.iv.95-97 (Riverside ed. 1974). For a provocative discussion of this theme in the context of the contemporary abortion debate, no less, see Denvir, *Comic Relief*, 63 TUL. L. REV. 1423 (1989).

60. Emerson, *English Traits*, quoted in L. MARX, *THE MACHINE IN THE GARDEN* 42 (1964).

sis involving both, may be a commonplace in commentary on *The Tempest*, what is natural remains a fundamental conundrum in the play. This complexity is magnified once we consider the range of human groupings the play suggests. Ecological images, for example, range across a spectrum from the seemingly uncontrolled danger of the tempest to the bounty provided by uncultivated nature, so long as you know "the best springs" (I.ii.159), as Caliban does, and "how to snare the nimble marmazet" (I.ii.170). The play's plot revolves around the consequences of the idea that "good wombs have borne bad sons" (I.ii.119). The possibility that the opposite may also be true—that bad wombs could bear good sons, perhaps even in the case of Sycorax and Caliban—looms as an important, subversive thought. If anything, the play seems still more skeptical when we confront the varied communities that humankind describe and represent. The world of deference to the better sort crumbles in the teeth of the opening gale. Gonzalo's paternalistic commonwealth cannot withstand the villains' simple ends/means critique. The exultation and release in the comic government of Caliban and his rebellious cohorts contrasts directly with Ferdinand's silly certainty that "some kinds of baseness/ Are nobly undergone; and most poor matters/ Point to rich ends" (III.i.2-4). His relationship with Miranda is a triumph of inhibition, a paean to contractual obligations and delayed gratification. Their romance is soppy, yet it also suggests a popular vision of the best of all possible worlds.

The Ceres masque seems to be the Ferdinand/Miranda relationship writ large, and domesticated to produce full, plentiful, but controlled "foison plenty" (IV.i.110). Yet there must be a Fall, even in this idealized version of agricultural England. Prospero cannot be satisfied and interrupts the masque, although Ferdinand and Miranda would settle for this misty vision and for Prospero's wisdom that "makes this place Paradise" (IV.i.124).

The early history of Plymouth similarly suggests parallel perils in its quest for a natural paradise. The first settlers aspired to live up to the message preached to them by their spiritual leader in the old country, Reverend John Robinson, before they set sail. But Robinson had admonished that their "House of God which you are and are to be, be not shaken with unnecessarie novelties or other oppositions at the first settling thereof." These settlers so quickly faced such serious oppositions, however, that they felt it necessary to innovate with the *Mayflower Compact* even before they landed. And there was still more dissent in the New World. The Pilgrims could not agree who might be

an appropriate minister to replace Robinson, who would not join them, and they soon confronted serious internal economic conflict as well. By 1623, moreover, William Bradford had to defend the colony against rumors reaching England that Plymouth was so alarmingly democratic as to allow women and children to vote. That same year, the planters in England tried to convince Bradford that efficiency would be greatly increased if he allowed the men of Plymouth to work for themselves and then to pay a tax to the plantation, though they conceded that all assets might still be held in common and no property could be passed in inheritance. Within four years, however, the Plymouth settlers decided to divide the plantation's assets into 58 shares, and the colony generally found itself loosening the religious and social bonds of trust with which this "House of God" had started to seek paradise in the harsh soil of New England.⁶¹

C. *Free the Tempest 20!*

Bitter experience teaches Prospero that trust begets danger. According to "good old Lord Gonzalo" (V.i.15), however, danger should beget trust. Further compounding the societal fissures subtly elaborated in the play is the sense that no sympathetic character seems self-reliant or even free. We have already noted the indentured servitude of Ariel; the harsher, biologically-based slavery of Caliban; and the voluntary servitude of Ferdinand and, to a degree, Miranda. But it is Prospero whose lack of freedom is most complex, most significant, and most memorable.

The issue of Prospero's old world authority in his New World is deeply problematic. Like the first white settlers in America, Prospero derives his power from books, yet the specific origins of his sovereignty—and even of his fatherhood—remain quite mysterious. Still, his authority seems greater, and certainly more authentic, than does Alonso's hierarchical claim, even though Alonso can invoke "the name of king" (I.i.17). Nor does Antonio's more practical, functional success legitimate his rule. Alonso mourns that "[t]he best is past" (I.iii.51), and, in service of his evil plot, Antonio believes that "what's past is prologue" (I.i.253). Yet neither passivity nor activity, neither being bound by nor free from the past, appears adequate.

Indeed, *The Tempest* may be read as a series of elaborations on a

61. G. LANGDON, PILGRIM COLONY: A HISTORY OF NEW PLYMOUTH, 1620-1691, at 21 *passim* (1966).

highly contentious theme in Stuart England, a linked set of issues that directly involved law, religion, and politics and soon helped produce considerable bloodshed. The central issue was a debate about origins, an issue placed in considerable doubt in *The Tempest*. As J.G.A. Pocock said of the era when *The Tempest* was first performed, "[t]he idea of the immemorial . . . took on an absolute colouring, which is one of the key facts in Stuart historico-political thought."⁶² Pocock asserts that the notion of immemorial rights, ultimately invoked against the sovereignty of the king, was derived from custom and had no traceable historical basis. It therefore allowed strongly nationalistic claims about the timeless origins of the English common law and the ancient constitution. There was not, and by logic could not be, any actual historical basis for such faith in a mythical "process without a beginning."⁶³

The belief that legitimate rule must be ancient law is, according to Pocock, "one of the deepest-seated preconceptions of the medieval mind,"⁶⁴ an idea that flowed as "a powerful stream"⁶⁵ at least into the seventeenth century and became a central, contested issue. Moreover, as Edmund Morgan succinctly put it, Americans tended more than their English counterparts to "recur, if not to a state of nature, in which all must be equal, at least to the condition prevailing immediately after a state of nature, that is, to the community or society that a contract among individuals supposedly produced just prior to their creation of government."⁶⁶

In Shakespeare's hands, however, we can discern a brilliant interweaving of mirrored images and half-hidden dark responses to bright hopes. Prospero's life was saved because he had the support of the people, yet popular perceptions could not be trusted. On the island, Shakespeare compels us to consider the multifaceted states of nature and the problematic natures of humankind. It may be this camouflaged social critique George Orwell saw—characteristically before most others—when he wrote that Shakespeare is "noticeably cautious, not to

62. J.G.A. Pocock, *supra* note 22, at 37.

63. *Id.* at 41.

64. *Id.* at 42.

65. *Id.* at 51.

66. E. Morgan, *supra* note 37, at 290. This tendency is mentioned prominently first in the thought of George Lawson in his response to Hobbes in the 1650s. *Id.* at 87. Then, in the Convention of 1688, English Whigs distinguished between the Community that came into existence prior to government by a "popular contract" among the people, and a commonwealth or government established by that Community through a "rectoral contract." *Id.* at 109.

say cowardly, in his manner of uttering unpopular opinions Throughout his plays the acute social critics, the people who are not taken in by accepted fallacies, are buffoons, villains, lunatics, or persons who are shamming insanity or are in a state of violent hysteria."⁶⁷ Although Shakespeare used subterfuges, he commented on almost everything, often with biting criticism.

In essence, I have been asserting that *The Tempest* is a profound exploration of why people accept other people's authority. Shakespeare emphasizes the role of history, even as he places the play beyond the limits of time and place. Yet I have tried to contextualize it a bit, to suggest why the profoundly disconcerting quality of *The Tempest* might have been particularly apt in times of widespread legal, religious, and political unrest (such as in England under James I) or in moments rife with the possibilities and dangers of new beginnings (as in the nascent colonies Stephen Hopkins encountered).

Perhaps I exaggerate when I hear echoes of Gonzalo, of Stephano, and even of Prospero—although the latter may be a diminished and more appealing fellow at the play's end—in John Winthrop's Arbella speech.⁶⁸ I am not referring to "city on a hill," one of the favorite misquotations by one of the favorite speech writers of the favorite former First Actor of the United States, but rather to Winthrop's recognition that the only way to "avoyde . . . shipwracke and to provide for our posterity"⁶⁹ would be to follow the counsel of Micah. In practical terms Winthrop preached that this meant, "wee must be knitt together in this worke as one man, wee must entertaine each other in brotherly Affection, wee must be willing to abridge ourselves of our superfulities, for the supply of others necessities."⁷⁰

Stephen Hopkins did not make this trip aboard the Arbella, but perhaps some who later became members of Thomas Hooker's band went along for that ride. The schism in Massachusetts Bay that helped

67. G. ORWELL, *Lear, Tolstoy and the Fool*, in COLLECTED ESSAYS 414 (1961). I owe thanks to Jack Schlegel for this citation.

68. Winthrop, *A Model of Christian Charity*, in E. MORGAN, PURITAN POLITICAL IDEAS 75 (1965).

69. *Id.* at 92.

70. *Id.* I am grateful to Saul Touster who reminded me of this passage. The reference to Micah is "to doe Justly, to love mercy, to walke humbly with our God." *Micah* 6:8. Winthrop goes on to say "wee must uphold a familiar Commerce together in all meekness, gentleness, patience and liberality, wee must delight in eache other, make others Conditions our owne rejoyce together, mourne together, labour, and suffer together, allwayes haveing before our eyes our Commission and Community in the worke, our Community as members of the same body." Winthrop, *supra*, note 68, at 92.

produce Connecticut's *Fundamental Orders* in 1639 may not have provided an entirely original idea, but it provided a theory, and even an outline of a practical governmental structure, for a brave new world—at least for those who could live in isolation and put in lots of evenings. Theirs was a new response to a nowhere-land, a time and place seemingly located between the state of nature and the creation of political community. Even silly old Gonzalo had not imagined the wild idea that government might actually rest on “the free consent of people.”⁷¹

Can we dream, even today, of a real community, or a conglomeration of different communities, resting on the free consent of the people? Would any such community ever welcome “the homeless, tempest tost”—the world’s “wretched refuse” and “huddled masses yearning to breathe free?”⁷² History is sobering, to say the least, and suggests that these ideas have been largely, perhaps hopelessly, utopian. Yet *The Tempest* whispers of hope even for the “tempest-tost.” As the play ends, there is a faint but resilient counterpoint to the severe skepticism I have described.

Prospero must learn—and it is a lesson underscored by the Epilogue, though it is not entirely clear that Prospero has absorbed it—that to grant indulgence is neither superfluous nor easy. It seems to take unusual courage to move beyond revenge, and perhaps even the condescension of mercy will not suffice. *The Tempest* hints that individual wisdom always must be “other-wise.” Nobody, not even a commanding figure such as Prospero, is free until he can connect somehow to the groupings and gropings of others. We require mutuality to avoid despair. Reciprocal indulgence is necessary, paradoxically, both for freedom of association and for the freedom of individual fulfillment. Mutual toleration is elusive, perhaps even impossible to sustain. Yet *The Tempest* warns that without such indulgence, no one ever has a prayer.

71. Henry Wolcott's notebook excerpt quoting Thomas Hooker's Sermon delivered to the General Court on May 31, 1638, quoted in M.J.A. JONES, *THE FUNDAMENTAL ORDERS OF CONNECTICUT* 17 (Bicentennial ed. 1988).

72. E. LAZARUS, *The New Colossus*, in *EMMA LAZARUS: SELECTIONS FROM HER POETRY AND PROSE* 48 (M. Schappes ed. 1967)(originally written in aid of Bartholdi Pedestal Fund, 1883; inscribed on a plaque on the Statue of Liberty).

